IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.5020 OF 1998.

1. Mr.Adam Abdul Gaffar Singaporewala
2. Mrs.Shamim Adam Singaporewala,
both Muslim Inhabitant of Mumbai,
Occupation: Service at present
residing at Prabhat Building, 1st
floor, Room No.66, Opp: Agripada
Police Station, Mumbai 400 011. ... Plaintiff.

Versus.

1. Mr.Shiraj Babubhai Bhayani,
as Guardian-at-litem of Master
Kshitij Sohel Noorani, minor
Muslim Inhabitant of Mumbai
at present reisidng at F-A/2,
Agakhan Baug, Yari Road, Versova,
Andheri (West), Mumbai 400 061.

2. Mr.Nasir Nuruddin Charania,
Muslim Inhabitant of Mumbai,
at present residing at A/1/202,
Vaishali Nagar, S.V.Road,
Jogeshwari (West), Mumbai 400 102,

3. Mr.Imran Ismail Gangwala,
Muslim Inhabitant of Bombay,
at present residing at 19/21.
Pakmodia Street, 1st floor,
Danarwala Chawl, Mumbai 400 003.

4. Achal Avichal Chanchal Cooperative
Housing Society Ltd., a registered
Co-operative Society having its
office at Kalyan Complex, Yari Road,
Versova, Andheri (West), Bombay
400 061.

5. Court Receiver of High Court
of Judicature at Bombay,
having its office at Bank of India,
building, Mahatma Gandhi Road,
Fort, Mumbai 400 023. ... Defendants.

Shri Vinay A.Sonpat for the Plaintiff.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 25th July, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Plaintiff. The suit is listed under the caption of "Undefended suit for exparte decree". The learned Counsel for the Plaintiff has tendered on record an affidavit in lieu of evidence of the 1st Plaintiff Shri Adam Abdul Gaffar Singaporewala. The said affidavit is marked "X" for identification and is taken on record. The learned Counsel for the Plaintiff has also tendered on record the original documents along with a list. The original documents along with the list are marked "Y" Collectively for identification and the same is taken on record.

2. The suit is for declaration of ownership in respect of flat No.706 on the 7th floor of the building known as Avichal, building No.3, Kalyan Complex, Yari Road, Versova, Bombay-61. The 2nd prayer is for declaration that the Plaintiffs are entitled to lawful possession of the suit flat. The third prayer is for discharge of the Court Receiver (5th Defendant).

3. According to the case of the Plaintiffs, the 2nd Plaintiff is the wife of the 1st Plaintiff. The 1st

Defendant was appointed guardian-ad-litem of a minor Master Kshitij Sohel Noorani. The 4th Defendant is a cooperative housing society in which the suit flat is situated. As stated earlier the 5th Respondent is the Court Receiver, High Court of Judicature at Bombay, who has been appointed as Receiver in respect of the suit flat.

4. According to the case of the Plaintiffs, they purchased the suit flat from the 2nd and 3rd Defendants by a deed of transfer dated 3rd February 1994 for a lumpsum consideration of Rs.4,11,000/-. It is contended that the 2nd and 3rd Defendants handed over vacant possession of the suit premises to the Plaintiffs on 3rd February 1994 and necessary forms were executed by the 2nd and 3rd Defendants in favour of the 4th Defendant-society. According to the case of the Plaintiffs, the 2nd and 3rd Defendants represented the Plaintiffs that they had purchased the suit flat from one Sohel Sultanali Noorani by a deed of transfer dated 30th September 1993. The original deed of transfer was also handed over to the Plaintiffs. Further case of the Plaintiffs is that the said Sohel Sultanali Noorani acquired the suit flat by an agreement of sale dated 17th August 1993 and an agreement for better amenities of the same date from M/s. Darayanani (Indo-Saigon) Constructions Pvt.Ltd. According to the Plaintiffs, the

said original agreement of sale as well as the agreement for better amenities were also handed over in custody of the Plaintiff.

5. According to the Plaintiffs necessary documents were submitted to the 4th Defendant-soceity for transfer of the flat in the name of Plaintiffs. Though the Plaintiffs started residing in the flat, the bills were issued by the 4th Defendant-society in the name of the said Sohel Sultanali Noorani. In June 1994 the Plaintiffs came to know that the 4th Defendant had rejected the application for membership. According to the case of the Plaintiffs, the members of the Managing Committee and servants of the 4th Defendant-society tried to obstruct the possession of the Plaintiffs over the suit flat. Therefore, the Plaintiffs were required to send an Advocate’s notice to the 4th Defendant. The Plaintiffs filed a dispute in the Cooperative Court against the 4th Defendant for a declaration of membership. The 4th Defendant raised an issue of jurisdiction before the Cooperative Court. However, the said objection was not entertained by the Cooperative Court. According to the case of the Plaintiffs, a letter was received from the Prothonotary & Senior Master of this Court by the 1st Plaintiff regarding the proceedings of a Miscellaneous Petition No.20 of 1994 filed in this Court. According to the case of the

Plaintiffs, the suit flat was sealed by the 5th Defendant. After making enquiries it was learnt that the said Sohel Sultanali Noorani from whom the 2nd and 3rd Defendants purchased the suit flat had died on 4th October 1993 leaving behind his son Master Kshitij Sohel Noorani. The Miscellaneous Petition No.20 of 1994 was filed by the 1st Defendant praying that he may be appointed as guardian-at-litem of the said minor. According to the case of the Plaintiffs, in Miscellaneous Petition No.20 of 1994, the 5th Defendant was appointed as the Receiver of the suit flat. By an order dated 5th March 1999, a copy of which is produced on record by the learned Counsel for the Plaintiffs, the Plaintiffs were appointed as agents of the Receiver without security and royalty. The learned Counsel for the Plaintiffs pointed out that accordingly the Plaintiffs have been placed in possession as agents of the Court Receiver. The said fact is confirmed by the representative of the Court Receiver who is personally present in Court. The appointment of the Plaintiffs as agents was made without any security or royalty.

6. There is no written statement filed by any of the Defendants. The claim of the Plaintiffs in the suit is duly proved by the affidavit of evidence of the documents. No one has disputed the claim made by the Plaintiffs. Therefore, the Plaintiffs will be entitled

to a decree in terms of prayer clauses (a) and (b). Prayer clause (c) is for discharge of the Court Receiver in respect of the suit flat. It is obvious that the said prayer cannot be granted by this Court as appropriate application has to be made by the Plaintiffs in the petition in which the order for appointment of Court Receiver has been passed.

7. Hence the suit is decreed in terms of prayer clauses (a) and (b). In so far as prayer clause (c) is concerned, though the said prayer is not granted, the Plaintiff will be at liberty to take out appropriate proceedings for discharge of Court Receiver before the appropriate Court.

8. Certified copy is expedited.

9. The Plaintiffs will be entitled to refund of Court fees, if any, as per the Rules.

Judge.